To Federal Communications Commission Chairman Julius Genachowski, Commissioners Michael Copps, Mignon Clyburn and Robert McDowell,

As new facts come in continuing to dispute AT&T's claims of benefits for consumers in the AT&T Mobility T Mobil USA merger I have shared those facts with you in updated docket filings. Below I will provide the text of an article "FCC Coddles and AT&T Throttles" as to why the merger should be rejected. The most recent news by the way showed that AT&T is becoming desperate to spin this merger as good for consumers but knowing the facts are against the merger (facts that came to light when someone from AT&T accidentally posted a filing to the FCC docket disproving AT&T's claims) has resorted to smearing critics. I wrote about AT&T's bogus claim that if they are allowed to merge they will give everyone broadband access. I've talked about how Ma Bell wants an anti competitive Ma Cell to rule wireless communications. I've discussed as bad as the two mergers with T Mobil USA and Qualcomm are individually how together they are far worse. Recent reports of AT&T rising prices for text messages (when it costs them hardly anything to send text messages they still charge consumers for texting) reveal the dangers of having limited or no competition in the wireless market. I've talked about how T Mobil merger reduces competition in national post-paid cellular phone market primarily to two companies AT&T and Verizon Wireless which would have a near duopoly with 80% of the market and leaving the smaller Sprint Nextel their only competitor (which owns Virgin Mobil a pre-paid cellular phone provider) pointing out that this merger is bad for competition, innovation and for consumers.

There is an article "FCC Coddles & AT&T Throttles" that is worth a read:

The FCC has taken to heart the maxim ?If at first you don?t succeed, try, try again,? allowing AT&T another chance to prove that its proposed purchase of T-Mobile is a bang-up idea.

Last week, AT&T submitted new economic models in support of its contention that the merger will create new and expanded network capacity for smartphones and tablets. At that time, the FCC hit pause on its 180-day timeline for review of the acquisition, allowing the telecom giant to change its case.

The move marked a change in recent FCC policy, which in this instance had required both AT&T and merger opponents to present all arguments in their initial filings. AT&T, which submitted its new models to the FCC last Monday, has dismissed claims that it?s making new arguments, contending that the new filing simply shores up its original rationale that the merger will be a boon to consumers.

The submission of AT&T?s new models coincided ? coincidentally! ? with a flurry of anti-merger activity on Capitol Hill.

In a letter to the FCC and the Department of Justice last Tuesday, Sen. Al Franken (D-Minn.) urged regulators to reject the deal, arguing that, "The competitive effects of a merger of this size and scope will reverberate throughout the telecommunications sector for decades to come and will affect consumer prices, customer service, innovation, competition in handsets and the quality and quantity of network coverage."

Franken?s filing came on the heels of anti-merger sentiments from Sen. Herb Kohl (D-Wis.), chair of the Senate?s Subcommittee on Antitrust, Competition Policy and Consumer Rights. In a July 20 letter to Attorney General Eric Holder and FCC Chair Julius Genachowski, Kohl wrote that the merger ?would likely cause substantial harm to competition and consumers, [and] would be contrary to antitrust law and not in the public interest, and therefore should be blocked.?

It?s a safe bet that this kind of industry consolidation ? if the merger goes through AT&T and Verizon will control nearly 80 percent of the mobile wireless market ? isn?t addressed in AT&T?s new models.

Meanwhile, AT&T isn?t content to wage the fight for the merger through the FCC alone. Now it?s hitting its own customers via a convenient redefinition of the term ?unlimited.?

The company announced Friday that beginning in October it will throttle speeds of the top five percent of smartphone users on its unlimited data plans. Those plans themselves are no longer even offered; AT&T hasn?t made them available to new customers since June 2010.

According to AT&T?s press release, anyone who streams ?very large amounts of video and music daily over the wireless network? may fall into the top five percent. The company doesn?t get much more specific than that but insists the move is necessary to relieve pressure on its network. ?Many experts,? the release says, ?agree that the country is facing a serious wireless spectrum crunch.?

AT&T doesn?t identify these ?experts? by name ? perhaps because its definition of ?crunch? is self-serving and overblown. In fact, in April the National Association of Broadcasters filed a study with the FCC suggesting that the wireless industry?s spectrum-crunch arguments should be examined more carefully. (Read the whole story here.)

And other industry insiders have found fault with AT&T?s story, which it?s been spinning ever since it announced the takeover of T-Mobile in March. Any capacity problems AT&T may be experiencing are largely due to its own failures. In May, Sprint CEO Dan Hesse told Wired, ?If AT&T invested a fraction of the $39 billion T-Mobile purchase price in its own network, it could alleviate its alleged capacity concerns, upgrade its network and deploy advanced wireless technologies without harming wireless competition.? (Sprint, incidentally, is the only major carrier that does not cap data or impose speed limits on users.)

PCWorld?s Tony Bradley also finds AT&T?s throttling argument dubious, calling it ?political theater.? Ethan McKinney at ConceivablyTech calls it ?blackmail.?

Still, AT&T insists that its spectrum crunch is real ? and that the fix it?s applying come fall is only a stopgap measure. ?[I]t will not solve our spectrum shortage and network capacity issues. Nothing short of completing the T-Mobile merger will provide additional spectrum capacity to address these near-term challenges,? its announcement said.

In other words, the sky is falling. And only a monopolistic merger can make things right.

In the end, AT&T is free to throttle speeds for supposedly unlimited data plans, no matter how much it will hurt consumers. What it shouldn?t do, however, is use its throttling to justify this disastrous merger.

Here I have another article to share FCC to AT&T: Is That Your Final Answer?

Last Thursday five AT&T employees and twelve of its outside attorneys, from six different firms, got on a conference call with thirty-two officials from the Federal Communications Commission and the Department of Justice. All told there were close to 50 people participating in the meeting.

Ostensibly, the conference call was for AT&T to explain its third and latest economic model that attempts to justify its merger with T-Mobile. But AT&T?s attempt seems to be more evidence that its bid to monopolize everything has been unraveling. The conference call represents yet another trip to the drawing board for AT&T, which has yet to convince the regulators that its numbers and projections justifying the merger actually add up. The all-hands-on-deck approach of the conference call looks like AT&T is sticking with the only tune it knows: quantity over quality.

Over the past two weeks the curtain has been drawn back, revealing troubling facts about the merger, and allowing decision-makers and analysts to focus on the serious problems with this deal. Yet AT&T is frantically trying to keep people focused on the all-powerful wizard rather than the lumpy man behind the curtain. The subterfuge is failing, and the air of inevitability that AT&T has tried so hard to cultivate is disappearing, exposing its vulnerability from many different quarters.

For starters, several members of Congress have looked at the facts and data underlying AT&T?s proposal and have sent detailed letters to both the DOJ and the FCC, either flat-out opposing the merger or expressing significant misgivings with it. Rep. Jay Inslee asked a series of cutting and incisive questions about AT&T?s claims, asking just how many jobs will be lost by ?consolidating platforms, customer care centers and headquarter organization.? Senators Herb Kohl and Al Franken warned of the harmful effects on competition and consumer choice. Representative Steve Chabot wrote about his concerns that the merger could harm rural and regional wireless providers. Representatives Ed Markey, Anna Eshoo and John Conyers wrote that the merger would be ?a retrenchment from nearly two decades of promoting competition and open markets to acceptance of a duopoly in the wireless marketplace.?

Then, the FCC stopped the clock on its informal review timetable. It appears that AT&T decided its original economic model justifying the merger was insufficient, and needed time to submit a revised version. That revise-and-resubmit process is still going on, as AT&T searches for the right alchemy to turn this leaden deal into gold.

The FCC put another speedbump in AT&T?s path, combining the review of the company?s bid to buy even more wireless spectrum from Qualcomm, with the T-Mobile merger review. The agency is now looking at the total amount of spectrum AT&T is aggregating across the country, preventing AT&T from playing a shell-game by simultaneously putting in separate bids to acquire spectrum far in excess of the caps and screens that used to prevent one company from owning too much of our nation?s airwaves.

State governments are also casting a jaundiced eye in AT&T?s direction. So far, nine separate states have acted upon their skeptical view of this merger by issuing subpoenas to AT&T and competitor Sprint Nextel for more detailed information about the wireless industry in general and the T-Mobile deal in particular.

Complicating matters for AT&T on Wall Street, the money people have been starting to get nervous since Bloomberg News reported that industry analysts are losing confidence that the merger will be approved. Snowing regulators is one thing, but separating investors from their money is a much heavier lift, particularly when billions of dollars are involved.

Last, AT&T has stepped on its own tail, unintentionally disclosing confidential documents that revealed the company could meet its commitments to deploy mobile broadband to 97 percent of the country for just $3.8 billion -- one-tenth of the $39 billion it is spending to acquire a competitor in T-Mobile that offers lower-priced services to wireless customers. This is irrefutable evidence that AT&T made a choice to eliminate competition in the market rather than invest in network upgrades. If the promise of rural broadband is the carrot AT&T is offering to win approval from Washington; denying rural Americans mobile broadband service is the stick -- supposedly. Remember, with all of AT&T?s merger bluster, Verizon is already planning to offer 4G LTE service to 97 percent of the country. Surrendering such a large portion of the market to Verizon would be an expensive self-sacrifice, and unlikely given AT&T?s dominant position in the marketplace.

The army of lawyers and lobbyists AT&T and T-Mobile have assembled to ram this merger through are going to need more than a conference call or two to make this deal happen. They?re going to have to convince two federal agencies, leaders in Congress, at least nine state regulatory agencies, investors and consumers that killing off competitors is somehow good for competition, cutting jobs is somehow good for employment, and refusing to invest in infrastructure is somehow good for investment.

Their effort is faltering. If the facts get more traction than AT&T?s fantasy, that effort will surely fail.